

REMARKS

Claims 1-20 are pending. Of those, claims 1, 9 and 17 are independent.

§102 REJECTION

Beginning on page 2 of the Office Action, claims 1-20 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,757,255 to Aoki et al. (the '255 patent). Applicant traverses.

With respect to **claim 1**, the Examiner has found a patent (namely, the '225 patent) that coincidentally uses the terms "average", "maximum", "minimum", and includes a passage asserted as corresponding to the claimed phrase "count value", and further includes another passage asserted as corresponding to the claimed phrase "standard deviation". These terms are not used by the '255 patent in regard to the same plurality of data elements.

Applicant has not recited merely a set of unrelated parameters. If that were the circumstance, then the Examiner's rejection might be reasonable. Instead, Applicant's parameters relate to the same "plurality of data elements".

Specifically, the Examiner refers to a section of the '255 patent disclosing an average congestion window size and asserts that it teaches "an indication of an average value of said plurality of data elements", as recited in claim 1, for example. Assuming for the sake of argument that the Examiner's assertion is reasonable, then a plurality of congestion window sizes would correspond to the claimed plurality of data elements. Next, the Examiner refers to a section of the '255 patent disclosing the recording of IP address pairs for each TCP communication session and asserts that it teaches "a count value indicating a number of data elements in said plurality of data elements", as recited in claim 1, for example. Assuming for

the sake of argument that the Examiner's assertion is reasonable, then a plurality of IP address pairs would correspond to the claimed plurality of data elements. A plurality of congestion window sizes, however, is not the same as a plurality of IP address pairs.

A distinction of claim 1 over the '255 patent is that the recited count value indicates the number of data elements in the same plurality thereof for which an average value is indicated, i.e., the average and the count value pertain to the same plurality of data elements. Again, the '255 patent teaches an average of plurality of congestion window sizes and a count value (assuming for sake of argument that such is taught) for a plurality of IP address pairs, i.e., an average and a count value albeit related to different pluralities of data elements.

Claims 2-8 depend from claim 1 and thus include at least the same distinction as claim 1 over the '255 patent. Applicant requests that this rejection be withdrawn.

With regard to independent **claims 9 and 17**, Applicant asserts that these claims are allowable at least for reasons similar to the rationale put forth above with regard to claim 1, respectively. **Claims 10-15 and 18-20** depend from claims 9 and 17 and thus include at least the same distinctions as claims 9 and 17 over the '255 patent, respectively.

In view of the foregoing discussion, withdrawal of the rejection is requested.

CONCLUSION

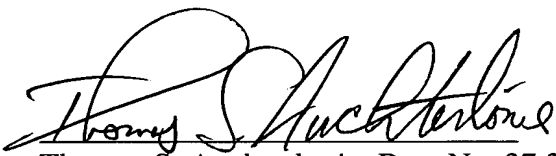
The issues in the case are considered to be resolved. Accordingly, Applicant requests a Notice of Allowance.

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In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact the undersigned to discuss the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,
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